

(g) *Law enforcement records.* Exemption 7 (5 U.S.C. 552(b)(7)) protects certain records or information compiled for law enforcement purposes. This exemption protects records where the production could reasonably be expected to interfere with enforcement proceedings; for example, the names of individuals who have filed fair housing complaints. The protection of this exemption also encompasses, but is not limited to, information in law enforcement files that could reasonably be expected to constitute an unwarranted invasion of personal privacy; the names of confidential informants; and techniques and procedures for law enforcement investigations, or guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law.

(h) *Supervision of financial institutions.* Exemption 8 (5 U.S.C. 552(b)(8)) protects information relating to the supervision of financial institutions. For purposes of Exemption 8, HUD is an “agency responsible for the regulation and supervision of financial institutions” for purposes of monitoring fair housing compliance.

(i) *Wells.* Exemption 9 (5 U.S.C. 552(b)(9)) protects geological information on wells.

§ 15.108 Business information.

(a) *In general.* Business information obtained by HUD from a submitter will be disclosed under the FOIA only under this section. In making final confidentiality determinations under this section, HUD relies to a large extent upon the information furnished by the affected business to substantiate its claim of confidentiality. HUD may be unable to verify the accuracy of much of the information submitted by the affected business. HUD will comply with Executive Order 12600 and follow the procedure in this section by giving notice to the affected business and an opportunity for the business to present evidence of its confidentiality claim. If HUD is sued by a requester under the FOIA for nondisclosure of confidential business information, HUD expects the affected business to cooperate to the fullest extent possible in defending such a decision.

(b) *Designation of business information.* A submitter of business information will use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Notice to submitters.* HUD will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks business information, wherever required under paragraph (d) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (e) of this section. The notice will either describe the business information requested or include copies of the requested records or portions of records containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(d) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) HUD has reason to believe that the information may be protected from disclosure under Exemption 4.

(e) *Opportunity to object to disclosure.* HUD will allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, the submitter should submit a detailed written statement specifying the grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, the submitter should show why the information is a trade secret or commercial or financial information that is privileged or confidential. HUD generally will not consider conclusory statements that particular information would be useful

§ 15.109

to competitors or would impair sales, or other similar statements, sufficient to justify confidential treatment. In the event that a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the disclosure of the information. Information provided by the submitter that is not received until after the disclosure decision has been made will not be considered by HUD. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* HUD will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever HUD decides to disclose business information over the objection of a submitter, HUD will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(g) *Exceptions to notice requirements.* The notice requirements of paragraphs (c) and (f) of this section will not apply if:

(1) HUD determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600.

(h) *Notice of a FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, HUD will promptly notify the submitter.

(i) *Corresponding notice to requesters.* Whenever HUD provides a submitter with notice and an opportunity to object to disclosure under paragraph (f) of this section, HUD will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the

disclosure of business information, HUD will notify the requester(s).

§ 15.109 Appeals.

(a) *In general.* A requester may appeal an adverse determination denying a request, in any respect, in writing. The letter of appeal should clearly identify the determination that is being appealed and the assigned tracking number. The appeal letter and envelope should be marked "Freedom of Information Act Appeal" for the quickest possible handling. If mailed, the requester's letter of appeal must be postmarked within 30 calendar days of the date of HUD's letter of determination. If the letter of appeal is transmitted electronically or by a means other than the United States Postal Service, it must be received in the appropriate office by the close of business on the 30th calendar day after the date of HUD's letter of determination.

(b) *Time frames*—(1) Expedited processing. HUD will decide an appeal of a denial of a request to expedite processing of a FOIA request within 10 working days of receipt of the appeal.

(2) *All other appeals.* HUD will make a determination on appeals within 20 working days of receipt, unless unusual circumstances require HUD to extend the time for an additional 10 working days.

(3) *Exceptions.* An appeal ordinarily will not be acted upon if the subject of the appeal is simultaneously being litigated in an applicable Federal court.

(c) *Content of appeals.* An appeal letter should include the following:

(1) A copy of the original request;

(2) A copy of the adverse determination;

(3) A statement of facts and legal arguments supporting the appeal; and

(4) Any additional information the appellant wishes to include.

(d) *When appeal is required.* Before seeking a court review of HUD's adverse determination, a requester generally must have exhausted their administrative remedies.

§ 15.110 HUD response to appeals.

(a) *In general.* (1) The appellate official will conduct a de novo review of the entire record and applicable law when making a decision.